
ENGROSSED SUBSTITUTE SENATE BILL 5344

State of Washington

61st Legislature

2009 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Ranker, Swecker, Rockefeller, Marr, Hargrove, Pridemore, Fraser, Shin, McDermott, and Kilmer)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to providing emergency response towing vessels;
2 amending RCW 88.46.068 and 88.46.130; adding new sections to chapter
3 88.46 RCW; creating new sections; and providing expiration dates.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the northern
6 coast of the Olympic Peninsula and Washington's west coast from Cape
7 Flattery south to Cape Disappointment:

8 (a) Possess uniquely rich and highly vulnerable biological, marine,
9 and cultural resources supporting some of the nation's most valuable
10 commercial, sport, and tribal fisheries;

11 (b) Sustain endangered species and numerous species of vulnerable
12 marine mammals; and

13 (c) Are internationally recognized through extraordinary
14 designations including a world heritage site, a national park, a
15 national marine sanctuary, national wildlife refuges, a maritime area
16 off-limits to shipping, and tribal lands and fishing areas of federally
17 recognized coastal Indian tribes.

18 (2) The legislature further finds that these coasts are
19 periodically beset by severe storms with dangerously high seas and by

1 strong currents, obscuring fog, and other conditions that imperil
2 vessels and crews. When vessels suffer damage or founder, the coasts
3 are likewise imperiled, particularly if oil is spilled into coastal
4 waters. Oil spills pose great potential risks to treasured resources.

5 (3) The legislature further finds that Washington has maintained an
6 emergency response tug at Neah Bay since 1999 to protect state waters
7 from maritime casualties and resulting oil spills. The tug is
8 necessary because of peculiarities of local waters that call for
9 special precautionary measures. The tug has demonstrated its necessity
10 and capability by responding to forty-one vessels in need of
11 assistance. State funding for the tug is scheduled to end on June 30,
12 2009.

13 (4) The legislature intends that the maritime industry should
14 provide and fully fund at least one year-round emergency response tug
15 at Neah Bay, with necessary logistical and operational support, and
16 that any tug provided by the maritime industry pursuant to this act
17 should meet or exceed technical performance requirements specified in
18 the state's fiscal year 2009 contract for the Neah Bay emergency
19 response tug.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 88.46 RCW
21 to read as follows:

22 (1) The owner or operator of a covered vessel that is subject to
23 requirements specified in RCW 88.46.130 must provide at least one
24 emergency response towing vessel that must be:

25 (a) Stationed at Neah Bay; and

26 (b) Continuously available and capable of responding to any vessel
27 emergency, including but not limited to:

28 (i) Loss or serious degradation of propulsion, steering, means of
29 navigation, primary electrical generating capability, or seakeeping
30 capability;

31 (ii) Hull breach; or

32 (iii) Oil spill.

33 (2) An emergency response towing vessel must be capable of:

34 (a) Deploying at any hour of any day to provide emergency
35 assistance;

36 (b) Being underway within twenty minutes of a decision to deploy,

1 with adequate crew to safely remain underway for at least forty-eight
2 hours;

3 (c) Effectively employing a ship anchor chain recovery hook and
4 line throwing gun;

5 (d) A bollard pull of at least seventy short tons; and

6 (e) Effectively operating in severe weather conditions with
7 sustained winds measured at forty knots and wave heights of twelve to
8 eighteen feet, including:

9 (i) Holding position within one hundred feet of another vessel; and

10 (ii) Making up to, stopping, holding, and towing a drifting or
11 disabled vessel of one hundred eighty thousand metric dead weight tons.

12 (3) An emergency response towing vessel must be equipped with:

13 (a) A ship anchor chain recovery hook;

14 (b) A line throwing gun; and

15 (c) Appropriate equipment for:

16 (i) Damage control patching;

17 (ii) Vessel dewatering;

18 (iii) Air safety monitoring; and

19 (iv) Digital photography.

20 (4) The requirements of this section may be fulfilled by a private
21 organization or nonprofit cooperative providing umbrella coverage under
22 contract to a single or multiple covered vessels. If a nonprofit
23 cooperative is formed or used to meet the requirements of this section,
24 it shall equitably apportion costs to each participating covered vessel
25 based on risk associated with particular classes of covered vessels,
26 navigational and structural characteristics of covered vessels, and the
27 number of covered vessel transits to or from a Washington port through
28 the Strait of Juan de Fuca, as defined in RCW 88.46.130(5), except for
29 transits extending no further west than Race Rocks.

30 (5) The department is authorized to contract with an emergency
31 response towing vessel provided under this section. Any use by the
32 department must be paid by the department.

33 (6) An owner or operator of a covered vessel that is required to
34 provide an emergency response towing vessel may not restrict the
35 emergency response towing vessel from responding to noncovered vessels
36 in distress.

37 (7) Nothing in this section prohibits the owner or operator of a

1 covered vessel or a private organization or nonprofit cooperative from
2 contracting with an emergency response towing vessel with capabilities
3 exceeding requirements specified in this section.

4 NEW SECTION. **Sec. 3.** (1) The legislature finds that all sectors
5 of the maritime industry have demonstrated the ability to cooperate in
6 reducing risks of oil spills and in providing for comprehensive
7 response actions when spills occur. Therefore, the legislature expects
8 that owners or operators of covered vessels that are subject to
9 requirements specified in RCW 88.46.130 will cooperate in sharing
10 responsibility for the emergency response system and in equitably
11 apportioning costs.

12 (2) The department of ecology shall monitor progress of the
13 maritime industry in establishing and funding the emergency response
14 system required by RCW 88.46.130. The department shall provide interim
15 progress reports to appropriate standing committees in the senate and
16 house of representatives by October 1, 2009, and again by December 1,
17 2009, the latter date coinciding with the deadline for contingency
18 plans for covered vessels operating in the Strait of Juan de Fuca to
19 provide for the emergency response system required by RCW 88.46.130.

20 (3) The department's reports required under subsection (2) of this
21 section must describe the maritime industry's processes for ensuring
22 that the emergency response system is established and funded by July 1,
23 2010, as required by RCW 88.46.130. The reports must provide available
24 information regarding:

25 (a) The anticipated annual cost of providing the emergency response
26 system;

27 (b) The methodology for determining the anticipated average annual
28 cost for each class of covered vessel, including:

29 (i) A system for crediting enhanced navigational or structural
30 characteristics;

31 (ii) Appropriate limits on total cost for vessels that frequently
32 transit the Strait of Juan de Fuca, as defined in RCW 88.46.130(5),
33 except for transits extending no further west than Race Rocks; and

34 (iii) Consideration of current economic conditions; and

35 (c) Any impediment to equitable apportionment of costs.

36 (4) As used in this section, "class of covered vessel" means:

37 (a) Oil tankers;

- 1 (b) Tank barges;
- 2 (c) Tug and oil barge combinations;
- 3 (d) Cargo vessels;
- 4 (e) Passenger vessels; and
- 5 (f) Other covered vessels.
- 6 (5) This section expires June 30, 2010.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW
8 to read as follows:

9 As soon as practicable following return of an emergency response
10 towing vessel after an incident necessitating a response, the covered
11 vessel owner or operator or the contracting organization shall submit
12 a report to the department. The report must provide a detailed
13 description of the incident necessitating a response and actions taken
14 to render assistance, and include high quality photographic
15 documentation.

16 **Sec. 5.** RCW 88.46.068 and 2006 c 316 s 4 are each amended to read
17 as follows:

18 (1) The department shall ((by rule)) adopt by rule procedures to
19 determine the adequacy of contingency plans approved under RCW
20 88.46.060. The rules shall require random practice drills without
21 prior notice that will test the adequacy of the responding entities.
22 The rules may provide for unannounced practice drills of individual
23 contingency plans.

24 (2) In addition to reviewing and approving contingency plans
25 required by RCW 88.46.060, the department shall also review and approve
26 the emergency response system required by RCW 88.46.130. Adequacy of
27 the system may be determined through practice drills, which may be
28 conducted without prior notice. Successful responses to vessel
29 emergencies may satisfy this requirement. Drills must test emergency
30 response towing vessels' ability to respond to worst case scenarios.

31 (3) The department shall review and publish a report on the drills,
32 including an assessment of response time and available equipment and
33 personnel compared to those listed in the contingency plans relying on
34 the responding entities, and requirements, if any, for changes in the
35 plans or their implementation.

1 (4) The department may require additional drills and changes in
2 arrangements for implementing approved plans which are necessary to
3 ensure their effective implementation.

4 **Sec. 6.** RCW 88.46.130 and 1991 c 200 s 426 are each amended to
5 read as follows:

6 (1) By July 1, 2010, the owner or operator of a covered vessel
7 transiting to or from a Washington port through the Strait of Juan de
8 Fuca, except for transits extending no further west than Race Rocks,
9 shall establish and fund an emergency response system ((for the Strait
10 of Juan de Fuca shall be established by July 1, 1992. In establishing
11 the emergency response system, the administrator shall consider the
12 recommendations of the regional marine safety committees. The
13 administrator shall also consult with the province of British Columbia
14 regarding its participation in the emergency response system))
15 providing at least one emergency response towing vessel stationed at
16 Neah Bay.

17 (2) Any emergency response towing vessel provided under this
18 section must:

19 (a) Be available to serve vessels in distress in the Strait of Juan
20 de Fuca and off of the western coast of the state from Cape Flattery
21 light south to Cape Disappointment light; and

22 (b) Meet the requirements specified in section 2 of this act.

23 (3) In addition to meeting requirements specified in RCW 88.46.060,
24 contingency plans for covered vessels operating in the Strait of Juan
25 de Fuca must provide for the emergency response system required by this
26 section. Documents demonstrating compliance with this section must be
27 submitted to the department by December 1, 2009. An initial
28 contingency plan submitted to the department after December 1, 2009,
29 must be accompanied by documents demonstrating compliance with this
30 section.

31 (4) The requirements of this section are met if:

32 (a) Owners or operators of covered vessels provide at least one
33 emergency response towing vessel that complies with subsection (2) of
34 this section; or

35 (b) The United States government implements a system of protective
36 measures that the department determines to be substantially equivalent.

1 (5) As used in this section, "Strait of Juan de Fuca" means waters
2 off of the northern coast of the Olympic Peninsula, from Cape Flattery
3 light east to New Dungeness light, terminating at a line extending from
4 Discovery Island light south to New Dungeness light.

5 NEW_SECTION. **Sec. 7.** (1) The director of the department of
6 ecology, or the director's designee, shall initiate discussions with
7 the director's counterpart in the government for the Canadian province
8 of British Columbia to explore options for Washington and British
9 Columbia to share marine emergency response assets required under this
10 act.

11 (2) The department of ecology must report any progress or outcomes
12 from discussions initiated under this section to appropriate committees
13 of the legislature by January 1, 2011.

14 (3) This section expires July 31, 2011.

15 NEW_SECTION. **Sec. 8.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

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